DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-222476 **DATE:** June 24, 1986

MATTER OF: Nebraska Aluminum Castings, Inc.

DIGEST:

1. A low bid in which the first article unit price charged by the bidder was more than 1,000 times greater than the unit price for the production items was properly rejected as materially unbalanced because an award to the firm would result in the payment of funds early in the contract period--in essence, an interest-free loan--to which the firm is not entitled with respect to the actual value of the first articles.

2. Where any capital expenditures in acquiring special equipment necessary to furnish acceptable first articles are an investment in the production quantity as well, such costs should be amortized over the entire contract rather than allocated solely to the first articles.

Nebraska Aluminum Castings, Inc. (NAC), protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAAK01-85-B-B060, issued by the United States Army Troop Support Command (Army). The procurement is for the acquisition of unmounted magnetic compasses for field use. NAC complains that the Army improperly determined that the firm's bid was materially unbalanced.

We deny the protest.

Background

The IFB solicited bids to furnish 100,002 compasses plus 10 units for first article testing. Bidders were required to price the production units and first articles separately. Four bids were received in response to the invitation. Delta Lighting Corp. was the apparent low bidder with a total price of $2,130,041, including $91,000 for the first articles and $2,034,041 for the production

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units. NAC's price was the second lowest at $2,142,135, with a price of $225,100 for the first articles and $1,917,038 for the production units. Stocker & Yale, Inc., the incumbent contractor, was the third low bidder with a total price of $2,209,268, with $12,224 for the first articles and $2,197,044 for the production units. The highest bidder was Mil-Tronics with a total price of $2,289,269, including $50,221 for the first articles and $2,239,045 for the production units.

Delta Lighting was determined to be nonresponsible to perform the contract, and NAC therefore was the remaining low bidder. However, the Army also found NAC to be nonresponsible due to its lack of experience in producing compasses. Because of NAC's status as a small business concern, the matter was referred to the Small Business Administration (SBA) for a certificate of competency (COC) determination. The SBA determined that NAC was a responsible prospective contractor to perform the work and advised the Army that it would issue a COC to NAC unless the Army chose to appeal the determination. Shortly before the appeal period expired, the Army rejected NAC's bid as nonresponsive on the ground that it was materially unbalanced with respect to the firm's first article pricing. The Army noted that NAC's first article price of $225,100 represented 10.5 percent of its total bid price, and that the respective $22,510 unit price for the first articles was more than 1,000 times greater than its $19.17 unit price for the production items. Moreover, the Army noted that NAC's first article price was much higher than the first article prices submitted by the other bidders. The Army determined that Stocker & Yale was in line for the award as the remaining low, responsive bidder, but no award has been made pending our resolution of NAC's subsequent protest of the Army's action to this Office.

<u>Analysis</u>

We believe the Army was justified in rejecting NAC's bid as materially unbalanced. The Army's determination reflects recent decisions of this Office in which we held that a bid which is mathematically unbalanced in the extreme because it grossly overprices first articles should be rejected, even if low, as suffering from the same defect as a prohibited advance payment. That is, an award to a firm submitting greatly enhanced first article prices will provide funds to the firm early in the period of contract performance--in essence, an interest-free loan--to which it is simply not entitled if payment is to be measured on the basis of actual value received. <u>Edgewater Machine & Fabricators, Inc.</u>, B-219828, Dec. 5, 1985, 65 Comp. Gen. ____, 85-2 CPD ¶ 630; <u>Riverport Industries, Inc.</u>, 64 Comp. Gen. 441 (1985), 85-1 CPD ¶ 364, <u>aff'd upon reconsideration</u>, B-218656.2, July 31, 1985, 85-2 CPD ¶ 108.

Thus, a bidding scheme which grossly front-loads first article prices as a device to obtain unauthorized contract financing renders the bid materially unbalanced per se so as to require its rejection as nonresponsive. Edgewater Machine & Fabricators, Inc., B-219828, supra.

In assessing whether or not a first article price is egregiously front-loaded, this Office will look to see if there is a significant difference in the scope and nature of the work required to produce the first articles on the one hand and the production items on the other. Riverport Industries, Inc.--Request for Reconsideration, B-218656.2, supra, 85-2 CPD ¶ 108 at 3. In our view, a significant difference does not exist where the first articles are simply initial samples identical to the production units, the sole purpose of which is to ensure that items conforming to the IFB's requirements will be furnished upon commencement of full production and where the first articles, if not destroyed during testing, will be delivered as end items indistinguishable from the production units. Id.

The same facts are present here. The 10 first article compasses are no different in configuration from the 100,002 production units, and the solicitation provides that any first articles not destroyed during testing will be furnished at the end of the contract period as part of the production quantity. Therefore, we see no legitimate reason why NAC should have submitted a unit price for the first articles which is more than 1,000 times greater than its unit price for the production items.

Although NAC argues that its first article pricing is justified because special equipment and tooling will be required to perform the contract, given that the manufacture of compasses is not its normal line of business, the argument is not persuasive. We recognize that certain cost factors may be associated with first articles which are not associated with the production items, such as higher parts and supply costs due to the lack of economies of scale in producing only a few items, and the costs involved in testing the first article units over a considerable period of time under stringent standards. Thus, those types of costs may properly be allocated to the first article price and do not serve to reflect improper front-loading. However, a bidder's costs in acquiring special equipment should not be allocated solely to the first articles because such capital expenditures are directly related to the firm's performance of the entire contract--that is, to the furnishing of the production items as well as the first articles. Where an investment in equipment necessary to produce acceptable first articles is also an investment in the production quantity itself, the costs of that equipment should be amortized over the total contract.

NAC's own cost figures show that the firm allocated nearly 75 percent of its special equipment costs and 100 percent of its special tooling costs to the first articles. In our view, this action, even if taken in good faith, led to the submission of a price for the first articles disproportionate to the actual value of those units. Thus, even though the firm's bid is the remaining low bid, an award to NAC with its inflated first article price would compromise the government's rights under the contract by creating an undesirable financial risk should contingencies arise after the first articles have been accepted and paid for that would ordinarily require termination of the contract. Edgewater Machine & Fabricators, Inc., B-219828, supra, 65 Comp. Gen. at __, 85-2 CPD ¶ 630 at 4. Hence, we conclude that the bid was properly rejected as materially unbalanced.

NAC contends that the percentage differential between its first article price and total bid price (10.5 percent) is much less than the differentials at issue in Riverport and Edgewater (40 and 25 percent, respectively) and, therefore, that its bid with respect to the first article pricing is not egregiously front-loaded as in those cases. However, that percentage differential is not determinative of the issue. Rather, it is the disproportionate relationship between first article pricing and first article value that is controlling in such matters and not the percentage differential between first article price and total bid price.

We also do not agree with NAC's assertion that the Army acted improperly in determining its bid nonresponsive several months after bids were opened. We cannot criticize the Army for acting upon the recommendations made in Riverport and Edgewater, both of which involved Army procurements, that steps be taken to discourage this type of bidding. Those decisions were issued some time ago, and they are controlling here.

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel